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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,769	09/27/2005	Mitchell Joe Dodson	1557-4 PCT/US	1779
23869 7590 10/08/2008 HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791				
EXAMINER				
KIM, CHRISTOPHER S				
ART UNIT		PAPER NUMBER		
3752				
MAIL DATE		DELIVERY MODE		
10/08/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/550,769

Applicant(s)

DODSON, MITCHELL JOE

Examiner

Christopher S. Kim

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5-12 and 14-22 is/are pending in the application.
4a) Of the above claim(s) 12 and 14-22 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1 and 5-11 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SF-08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The reply filed June 27, 2008 is acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

3. Applicant elected with traverse Group I in the reply filed on March 26, 2008.
The requirement is was made FINAL in the Office action mailed on April 9, 2008.
4. Claims 12, 14-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on March 26, 2008.

Claim Rejections - 35 USC § 112

5. Claims 1, 5-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "a cross member having an end wall having an outlet aperture...the cross member defining at least two deflectors that converge towards the aperture..." The specification discloses a pipe 15 (apparently the cross member) having

deflectors 3, 4 converging towards the aperture 20. The specification also discloses the nozzle comprising a fluid passageway terminating in an end wall having an outlet aperture (20). The "at least two deflectors" appear to be a double inclusion of the end wall.

Claim 1 recites the limitation "an outlet aperture of fixed cross sectional area" in line 3. It further recites the limitation "adapted to move across the aperture to decrease or increase the cross sectional area" in lines 6-7. The claim contradicts itself by requiring that the outlet aperture has (1) a fixed cross sectional area; and (2) an adjustable cross sectional area. Claim 10 contains a similar recitation.

Claim 6 recites the limitation "two axially displaceable pins" in line 2. It appears to be a double inclusion of the "at least one axially displaceable pin" recited in claim 1, line 6. It is uncertain whether claim 6 requires two axially displaceable pins or three axially displaceable pins.

Claim 11 recites the limitation "the pins" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. Claims 1, 5-7, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Higgins (816,470).

Higgins discloses a nozzle comprising:

a liquid passageway 8;

a cross member 9 having:

an end wall having an outlet aperture 7;
at least two deflectors (the internal cylindrical surface of 9 that converges to aperture 7);
at least one axially displaceable pin 10, 11;
means (square heads of plugs 10, 11 and threads) to control the axial displacement.

Claim Rejections - 35 USC § 103

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins (816,470).

Higgins discloses the limitations of the claimed invention with the exception of the fluid passageway having the same diameter as the cross member. Although Higgins discloses, on page 1, lines 65-68, that the size of the nozzle at its discharge end is increased to accommodate said apertures 9 and plugs 10, 11 and insure structural strength, Higgins does not specifically disclose the internal diameters of the fluid passage and the cross member. It is knowledge within one of ordinary skill in the art to size fluid passages. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have sized the internal diameter of the fluid passage and cross member to maintain constant fluid volume.

Response to Arguments

8. Applicant's arguments filed June 27, 2008 have been fully considered but they are not persuasive.

Applicant argues that only one of the plugs has an inclined surface which deflects and converges. Higgins discloses at least two deflectors, the internal cylindrical surface of 9 that converges to aperture 7.

Regarding applicants argument directed to the recitation, "for producing a flat spray patterns," an intended use recitation merely requires the ability to so perform. A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). MPEP 2114.

Applicant argues that the subject application operates on liquid, preferably water. Higgins discloses "oil" which constitutes liquid. In addition, the term "liquid" in the recitation "a liquid passageway" is a description of the passageway, i.e., nothing more than the intended use of the passageway. A "liquid" is not a positively recited limitation.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571) 272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3752

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher S. Kim/
Primary Examiner, Art Unit 3752

CK